

PETER C. WOLFF, JR. #2332
Federal Public Defender
District of Hawaii

ALEXANDER SILVERT
First Assistant Federal Defender
300 Ala Moana Boulevard, Suite 7104
Honolulu, Hawaii 96850-5269
Telephone: (808) 541-2521
Facsimile: (808) 541-3545
E-Mail: alexander_silvert@fd.org

Attorney for Petitioner
REGINA SMITH

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

REGINA SMITH,)	CIV. NO. 04-00091 HG/BMK
)	
Petitioner,)	PETITIONER'S RESPONSE TO
)	COURT'S MINUTE ORDER ISSUED
vs.)	ON APRIL 6, 2006; CERTIFICATE OF
)	SERVICE
JOHN F. PEYTON, Director,)	
Department of Public Safety, State of)	
Hawaii; and MILLICENT)	
NEWTON-EMBRY, Warden, Mabel)	
Bassett Correctional Center,)	
)	
Respondents.)	
_____)	

PETITIONER'S RESPONSE
TO COURT'S ORDER ISSUED ON APRIL 6, 2006

Petitioner, Regina Smith, herein responds to the Court's minute order issued on April 6, 2006. Petitioner submits that the Court is correct in that grounds

three and four of her federal habeas petition were not included in her opening brief to the Hawaii Supreme Court, dated October 1, 2001. Petitioner did, however, file a timely and proper appeal to the Hawaii Supreme Court regarding the denial of her first Rule 40 Petition. That appeal was from the denial of her Amended Rule 40 Petition which did expressly raise grounds three and four and upon which the Circuit Court decided the merits of those two claims.

That appeal was dismissed by the Hawaii State Supreme Court because Petitioner allegedly did not comply with filing and procedural rules and orders issued by the Supreme Court related to the proper and timely filing of briefs to the state court. In essence, because Petitioner allegedly failed to comply with these procedural state rules as well as specific orders issued by the Court in her appeal, the state court struck Petitioner's brief as not being properly filed and dismissed her appeal. As such, the last actually filed and accepted document related to her first state court Rule 40 petition was her Amended Rule 40 Petition filed with and ruled upon by the Hawaii State Circuit Court. That Amended Rule 40 Petition did contain grounds three and four. Petitioner had previously asked this Court to hold an evidentiary hearing regarding her failure to properly follow the state court orders which resulted in the dismissal of her certiorari appeal to the Hawaii Supreme Court. Petitioner contends that at this hearing she could demonstrate "cause and actual prejudice" to excuse her procedural default.

However, at this time, in order to move these proceedings forward and in order not to jeopardize the remaining grounds as set forth in her federal habeas corpus petition currently pending before the Court, Petitioner hereby withdraws grounds three and four.

DATED: Honolulu, Hawaii, April 21, 2006.

/s/ Alexander Silvert
ALEXANDER SILVERT
Attorney for Petitioner
REGINA SMITH

CERTIFICATE OF SERVICE

I, ALEXANDER SILVERT, hereby certify that on the date and by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses on April 21, 2006:

Served by First Class Mail:

DANIEL H. SHIMIZU
Deputy Prosecuting Attorney
City and County of Honolulu
1060 Richards Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, April 21, 2006.

/s/ Alexander Silvert
ALEXANDER SILVERT
Attorney for Petitioner
REGINA SMITH